



state a cause of act in negligence as to this party.

The essential elements of actionable negligence are the existence of a duty on the part of one to another; the breach of that legal duty; and injury to the person to whom the duty is owed as a proximate result of the breach; Rojos vs. Buddies Food Store, 518 S.W. 2d 534 (Tex. 1975) and cases cited therein. Duty is a threshold issue in a negligence case.

No Texas court has recognized post marketing duty on the part of a manufacturer to recall its product or to remedy alleged dangerous defects in a product which are not discovered until after manufacture and sale. Bell Helicopter Co. vs. Bradshaw, 594S.W.2d5 (Tex. App.- Corpus Christi, 1979).

Because Texas does not impose on manufacturers the duty to recall products for which a safer design has been developed, the Plaintiffs' allegations of negligence and gross negligence against Riddell Inc. fail as a matter of law. Syrie vs. Knoll Intern, 748 F.2d 304 (5<sup>th</sup> Cir. 1984).

WHEREFORE, PREMISES CONSIDERED, Riddell, Inc. respectfully requests this Court grant its Motion for Judgment on Pleadings and that Plaintiffs take nothing against this party on their negligence and gross negligence claims, and for such other and further relief, general, special, legal and equitable to which this party may show itself justly entitled.

Respectfully submitted,

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### CERTIFICATE OF CONFERENCE

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he refused to agree to this motion.

  
Robert Summers

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 25<sup>th</sup> day of April, 2001.

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